

House Engrossed

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**JANICE K. BREWER
SECRETARY OF STATE**

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CHAPTER 104

HOUSE BILL 2083

AN ACT

AMENDING SECTION 13-702, ARIZONA REVISED STATUTES; RELATING TO SENTENCING.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 13-702, Arizona Revised Statutes, is amended to read:

13-702. Sentencing; definition

A. Sentences provided in section 13-701 for a first conviction of a felony, except those felonies involving the discharge, use or threatening exhibition of a deadly weapon or dangerous instrument or the intentional or knowing infliction of serious physical injury upon another or if a specific sentence is otherwise provided, may be increased or reduced by the court within the ranges set by this subsection. Any reduction or increase shall be based on the aggravating and mitigating circumstances contained in subsections C and D of this section and shall be within the following ranges:

	<u>Minimum</u>	<u>Maximum</u>
1. For a class 2 felony	4 years	10 years
2. For a class 3 felony	2.5 years	7 years
3. For a class 4 felony	1.5 years	3 years
4. For a class 5 felony	9 months	2 years
5. For a class 6 felony	6 months	1.5 years

B. The upper or lower term imposed pursuant to section 13-604, 13-604.01, 13-604.02, 13-702.01 or 13-710 or subsection A of this section may be imposed only if one or more of the circumstances alleged to be in aggravation of the crime are found to be true by the trier of fact beyond a reasonable doubt, or in mitigation of the crime are found to be true by the trial judge, on any evidence or information introduced or submitted to the court or the trier of fact before sentencing or any evidence presented at trial, and factual findings and reasons in support of such findings are set forth on the record at the time of sentencing.

C. For the purpose of determining the sentence pursuant to section 13-710 and subsection A of this section, the trier of fact shall determine and the court shall consider the following aggravating circumstances:

1. Infliction or threatened infliction of serious physical injury, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under section 13-604.

2. Use, threatened use or possession of a deadly weapon or dangerous instrument during the commission of the crime, except if this circumstance is an essential element of the offense of conviction or has been utilized to enhance the range of punishment under section 13-604.

3. If the offense involves the taking of or damage to property, the value of the property so taken or damaged.

4. Presence of an accomplice.

5. Especially heinous, cruel or depraved manner in which the offense was committed.

6. The defendant committed the offense as consideration for the receipt, or in the expectation of the receipt, of anything of pecuniary value.

1 7. The defendant procured the commission of the offense by payment, or
2 promise of payment, of anything of pecuniary value.

3 8. At the time of the commission of the offense, the defendant was a
4 public servant and the offense involved conduct directly related to the
5 defendant's office or employment.

6 9. The victim or, if the victim has died as a result of the conduct of
7 the defendant, the victim's immediate family suffered physical, emotional or
8 financial harm.

9 10. During the course of the commission of the offense, the death of an
10 unborn child at any stage of its development occurred.

11 11. The defendant was previously convicted of a felony within the ten
12 years immediately preceding the date of the offense. A conviction outside
13 the jurisdiction of this state for an offense that if committed in this state
14 would be punishable as a felony is a felony conviction for the purposes of
15 this paragraph.

16 12. The defendant was wearing body armor as defined in section 13-3116.

17 13. The victim of the offense is at least sixty-five years of age or is
18 a disabled person as defined by section 38-492.

19 14. The defendant was appointed pursuant to title 14 as a fiduciary and
20 the offense involved conduct directly related to the defendant's duties to
21 the victim as fiduciary.

22 15. Evidence that the defendant committed the crime out of malice
23 toward a victim because of the victim's identity in a group listed in section
24 41-1750, subsection A, paragraph 3 or because of the defendant's perception
25 of the victim's identity in a group listed in section 41-1750, subsection A,
26 paragraph 3.

27 16. The defendant was convicted of a violation of section 13-1102,
28 section 13-1103, section 13-1104, subsection A, paragraph 3 or section
29 13-1204, subsection A, paragraph 1 or 2 arising from an act that was
30 committed while driving a motor vehicle and the defendant's alcohol
31 concentration at the time of committing the offense was 0.15 or more. For
32 the purposes of this paragraph, "alcohol concentration" has the same meaning
33 prescribed in section 28-101.

34 17. Lying in wait for the victim or ambushing the victim during the
35 commission of any felony.

36 18. The offense was committed in the presence of a child and any of the
37 circumstances exist that are set forth in section 13-3601, subsection A.

38 19. The offense was committed in retaliation for a victim's either
39 reporting criminal activity or being involved in an organization, other than
40 a law enforcement agency, that is established for the purpose of reporting or
41 preventing criminal activity.

42 20. The defendant was impersonating a peace officer as defined in
43 section 1-215.

44 21. The defendant was in violation of 8 United States Code section
45 1323, 1324, 1325, 1326 or 1328 at the time of the commission of the offense.

1 22. The defendant used a remote stun gun or an authorized remote stun
2 gun in the commission of the offense. For the purposes of this paragraph:

3 (a) "Authorized remote stun gun" means a remote stun gun that has all
4 of the following:

5 (i) An electrical discharge that is less than one hundred thousand
6 volts and less than nine joules of energy per pulse.

7 (ii) A serial or identification number on all projectiles that are
8 discharged from the remote stun gun.

9 (iii) An identification and tracking system that, on deployment of
10 remote electrodes, disperses coded material that is traceable to the
11 purchaser through records that are kept by the manufacturer on all remote
12 stun guns and all individual cartridges sold.

13 (iv) A training program that is offered by the manufacturer.

14 (b) "Remote stun gun" means an electronic device that emits an
15 electrical charge and that is designed and primarily employed to incapacitate
16 a person or animal either through contact with electrodes on the device
17 itself or remotely through wired probes that are attached to the device or
18 through a spark, plasma, ionization or other conductive means emitting from
19 the device.

20 23. DURING OR IMMEDIATELY FOLLOWING THE COMMISSION OF THE OFFENSE, THE
21 DEFENDANT COMMITTED A VIOLATION OF EITHER SECTION 28-661, 28-662 OR 28-663.

22 ~~23-~~ 24. Any other factor that the state alleges is relevant to the
23 defendant's character or background or to the nature or circumstances of the
24 crime.

25 D. For the purpose of determining the sentence pursuant to section
26 13-710 and subsection A of this section, the court shall consider the
27 following mitigating circumstances:

28 1. The age of the defendant.

29 2. The defendant's capacity to appreciate the wrongfulness of the
30 defendant's conduct or to conform the defendant's conduct to the requirements
31 of law was significantly impaired, but not so impaired as to constitute a
32 defense to prosecution.

33 3. The defendant was under unusual or substantial duress, although not
34 such as to constitute a defense to prosecution.

35 4. The degree of the defendant's participation in the crime was minor,
36 although not so minor as to constitute a defense to prosecution.

37 5. DURING OR IMMEDIATELY FOLLOWING THE COMMISSION OF THE OFFENSE, THE
38 DEFENDANT COMPLIED WITH ALL DUTIES IMPOSED UNDER SECTIONS 28-661, 28-662 AND
39 28-663.

40 ~~5-~~ 6. Any other factor that is relevant to the defendant's character
41 or background or to the nature or circumstances of the crime and that the
42 court finds to be mitigating.

43 If the trier of fact finds at least one aggravating circumstance, the trial
44 court may find by a preponderance of the evidence additional aggravating
45 circumstances. In determining what sentence to impose, the court shall take
46 into account the amount of aggravating circumstances and whether the amount

1 of mitigating circumstances is sufficiently substantial to call for the
2 lesser term. If the trier of fact finds aggravating circumstances and the
3 court does not find any mitigating circumstances, the court shall impose an
4 aggravated sentence.

5 E. The court in imposing a sentence shall consider the evidence and
6 opinions presented by the victim or the victim's immediate family at any
7 aggravation or mitigation proceeding or in the presentence report.

8 F. Nothing in this section affects any provision of law that imposes
9 the death penalty, that expressly provides for imprisonment for life or that
10 authorizes or restricts the granting of probation and suspending the
11 execution of sentence.

12 G. Notwithstanding any other provision of this title, if a person is
13 convicted of any class 6 felony not involving the intentional or knowing
14 infliction of serious physical injury or the discharge, use or threatening
15 exhibition of a deadly weapon or dangerous instrument and if the court,
16 having regard to the nature and circumstances of the crime and to the history
17 and character of the defendant, is of the opinion that it would be unduly
18 harsh to sentence the defendant for a felony, the court may enter judgment of
19 conviction for a class 1 misdemeanor and make disposition accordingly or may
20 place the defendant on probation in accordance with chapter 9 of this title
21 and refrain from designating the offense as a felony or misdemeanor until the
22 probation is terminated. The offense shall be treated as a felony for all
23 purposes until such time as the court may actually enter an order designating
24 the offense a misdemeanor. This subsection does not apply to any person who
25 stands convicted of a class 6 felony and who has previously been convicted of
26 two or more felonies. If a crime or public offense is punishable in the
27 discretion of the court by a sentence as a class 6 felony or a class 1
28 misdemeanor, the offense shall be deemed a misdemeanor if the prosecuting
29 attorney:

30 1. Files an information in superior court designating the offense as a
31 misdemeanor.

32 2. Files a complaint in justice court or municipal court designating
33 the offense as a misdemeanor within the jurisdiction of the respective court.

34 3. Files a complaint, with the consent of the defendant, before or
35 during the preliminary hearing amending the complaint to charge a
36 misdemeanor.

37 H. For the purposes of this section, "trier of fact" means a jury,
38 unless the defendant and the state waive a jury in which case the trier of
39 fact means the court.

APPROVED BY THE GOVERNOR APRIL 12, 2006.

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